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LITTERA SCRIPTA MANET

FEDERAL REGISTER

VOLUME 3 NUMBER 68

Washington, Thursday, April 7, 1938

PRESIDENT OF THE UNITED STATES.

CHILD HEALTH DAY—1938

By the President of the United States of America

A PROCLAMATION

WHEREAS a joint resolution of the Congress approved May 18, 1928 (45 Stat. 617), authorizes and requests the President of the United States to issue annually a proclamation setting apart May 1 as Child Health Day; and

WHEREAS child health is of vital concern to the Nation:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do hereby designate the first day of May of this year as Child Health Day.

And I hereby call the people of the United States to the peaceful task of considering whether the children in their families and in each community are receiving the full benefit of our knowledge of how to promote the health of mothers and babies at the time of birth and of children throughout the period of growth and development, and ask them to plan how the child-health work of our public and private agencies can be extended and made more effective. I also call upon the children to celebrate the gains they have made during the year in health and strength and to do their part in the year-round effort to promote the health of the Nation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 4th day of April in the year of our Lord nineteen hundred and thirty-eight, and of the Independence of the United States of America the one hundred and sixty-second.

[SEAL]

FRANKLIN D ROOSEVELT

By the President:
CORDELL HULL
Secretary of State.

[No. 2278]

[F. R. Doc. 38-986; Filed, April 6, 1938; 10:54 a. m.]

TREASURY DEPARTMENT.

Bureau of Customs.

[T. D. 49490]

COUNTERVAILING DUTIES—GERMAN AGRICULTURAL PRODUCTS

REVOCATION OF TREASURY DECISIONS IMPOSING COUNTERVAILING DUTIES ON CERTAIN GERMAN AGRICULTURAL PRODUCTS

To Collectors of Customs and Others Concerned:

Pursuant to the authority contained in section 303 of the Tariff Act of 1930 (U. S. C., title 19, sec. 1303), T. D. 32768, dated August 22, 1912, as amended or revised by T. Ds. 32828, 32939, 33953, 33975, and 36073, dated September 21 and November 16, 1912, December 6 and 11, 1913, and January 14, 1916, respectively, relating to countervailing duties on certain German agricultural products, are revoked for the reason that, according to an official report, payment of the bounties ceased pursuant to a decree of the German Government issued on September 24, 1937.

[SEAL]

H. A. BENNER,
Acting Commissioner of Customs.

Approved March 31, 1938.
WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

[F. R. Doc. 38-981; Filed, April 5, 1938; 4:01 p. m.]

Office of the Secretary.

[1938—Department Circular No. 1]

VALUES OF FOREIGN MONEYS

APRIL 1, 1938.

Pursuant to section 522, title IV, of the Tariff Act of 1930, reenacting section 25 of the act of August 27, 1894, as amended, the following estimates[1] by the Director of the Mint of the values of foreign monetary units are hereby proclaimed to be the values of such units in terms of the money of account of the United States that are to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning April 1, 1938, expressed in any such foreign monetary units: *Provided, however*, That if no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate, as determined and certified by the Federal Reserve Bank of New York and published by the Secretary of the Treasury pursuant to the provisions of section 522, title IV, of the Tariff Act of 1930.

[SEAL]

WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

[F. R. Doc. 38-988; Filed, April 6, 1938; 12:26 p. m.]

DEPARTMENT OF THE INTERIOR.

Office of Indian Affairs.

AMENDMENT OF REGULATIONS ON SALE OF TIMBER PRODUCTS ON MENOMINEE INDIAN RESERVATION

MARCH 5, 1938.

Mr. H. W. JOHANNES,
Manager, Menominee Indian Mills.

DEAR MR. JOHANNES: Reference is made to your letters of January 20 and February 5, suggesting proposed changes in

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[1] See Page 837.

FEDERAL REGISTER

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TABLE OF CONTENTS

Department of Agriculture:
  Agricultural Adjustment Administration: Page
    Irish (white) potatoes grown in Louisiana and in certain counties of Alabama, etc., hearing on handling of ... 837
Department of the Interior:
  Office of Indian Affairs:
    Menominee Indian Reservation, amendment of regulations on sale of timber products ... 835
Federal Communications Commission:
  Amendment of order assigning Commissioners, etc., to act on various classes of applications ... 838
Federal Home Loan Bank Board:
  Home Owners' Loan Corporation:
    Treasury Chapter of Manual amended—Escrow account provisions revoked ... 838
President of the United States:
  Child Health Day Proclamation ... 835
Railroad Retirement Board:
  Regulations relating to existence or non-existence of an employment relation as defined in Railroad Retirement Act of 1937 ... 839
Securities and Exchange Commission:
  Citizens Utilities Co., amendment to order granting temporary exemption ... 840
Treasury Department:
  Bureau of Customs:
    Countervailing duties revoked on certain German agricultural products ... 835
  Office of the Secretary:
    Foreign moneys, values of ... 835

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the regulations covering the sale of timber products on the Menominee Indian Reservation.

The amendment of the act of March 28, 1908 (35 Stat. 51), contained in the act of May 18, 1916 (39 Stat. 157), provides:

> That the lumber, lath, shingles, crating, ties, piles, poles, posts, bolts, logs, bark, pulpwood and other marketable materials obtained from the forests on the Menominee Reservation shall be sold under such rules and regulations as the Secretary of the Interior may prescribe.

As you have been previously advised there does not appear to be any authority under which the Menominee Indian Mills may exchange lumber or purchase lumber for resale purposes. However, there does not appear to be any prohibition against the purchase of building materials to be sold through the warehouse.

On November 9 the Menominee Advisory Board approved the adoption of changes in the sales regulations which would permit the allowance of a two per cent cash discount on payments made within 10 days after arrival of shipment, or 60 days net. In accordance with your recommendations and those of the Menominee Advisory Board, Section 9 of the "Regulations for the Sale of Timber Products on the Menominee Indian Reservation" approved February 24, 1934, by the Assistant Secretary of the Interior, is hereby modified to read as follows:

SEC. 9. Payments in full for all material sold must be made before shipment, except that on all cash payments a discount of two per cent (2%) of the selling price may be allowed in the discretion of the Manager and the Sales Manager; and those purchasers whose names shall be placed on an approved credit list, to be established by the Manager and Special Disbursing Agent, may have shipments go forward without payment in advance on condition that payment for the material included in such shipments must be made within ten (10) days from the date of arrival of shipment, unless specific arrangement for a longer time has been made. Such credit shipments must be made with the understanding that the purchase price is due and payable when the shipment is made and that the material sold is forwarded at the risk of the purchaser. Credit of this nature may be extended for thirty (30) days from date of shipment, and in special cases, when advantageous to the Menominee Indian Mills through the elimination of rehandling charges or for other satisfactory reasons, may be extended for sixty (60) days from date of shipment. The two per cent (2%) discount may be allowed when purchasers on the approved credit list pay within ten (10) days from the date of arrival of shipment, but no discount shall be allowed on payments made after the expiration of the said ten (10) days. Shipments in advance of full payment may be sent forward consigned to the order of the Menominee Indian Mills, and the invoice and a draft for the value of the material shipped may be sent through reliable banks for collection, with collection fees payable by the purchaser. In the event that such a draft is not promptly paid, the Menominee Indian Mills may cancel the sale and sell the materials shipped in the open market, the original purchaser being responsible and held liable for any loss that results from his default. All payments for products of the operation must be made direct to the Menominee Indian Mills.

In view of the lumber trade practice of allowing an eight per cent discount to the wholesale trade, the following is hereby added to Section 11 of the Sales Regulations:

Sales may be made to wholesalers on which a discount of not more than eight per cent (8%) of the f. o. b. mill value may be allowed.

Sincerely yours,

JOHN HERRICK,
Assistant to the Commissioner.

Approved March 16, 1938.

OSCAR L. CHAPMAN
Assistant Secretary of the Interior.

[F. R. Doc. 38-985; Filed, April 6, 1938; 10:21 a. m.]

VALUES OF FOREIGN MONETARY UNITS (AT PAR AS REGARDS GOLD UNITS; NONGOLD UNITS HAVE NO FIXED PAR WITH GOLD)

Country	Monetary unit	Value in terms of U. S. money	Remarks
Argentine Republic	Peso	$1.6335	Given valuation is of gold peso. Paper nominally convertible at 44% of face value. Conversion suspended Dec. 16, 1929.
Australia	Pound	8.2397	Control of gold stocks and exports authorized Dec. 17, 1929.
Austria	Schilling		
Belgium	Belga	.1695	By decree of Mar. 31, 1936. One belga equals 5 Belgian francs.
Bolivia	Boliviano	.6180	Conversion of notes into gold suspended Sept. 23, 1931.
Brazil	Milreis		Conversion of Stabilization-Office notes into gold suspended Nov. 22, 1930.
British Honduras	Dollar	1.6931	Conversion of notes suspended.
Bulgaria	Lev	.0122	Exchange control established Oct. 15, 1931.
Canada	Dollar	1.6931	Embargo on export of gold, Oct. 19, 1931; redemption of Dominion notes in gold suspended Apr. 10, 1933.
Chile	Peso	.2060	Given valuation is of gold peso. Gold pesos are received for conversion at the rate of 4 paper pesos for one gold peso. Conversion of notes suspended July 30, 1931.
China	Yuan		Silver standard abandoned by decree of Nov. 3, 1935; bank notes made legal tender under Currency Board control; exchange rate for British currency primarily fixed at about 1 s. 2½d., or about 29½¢. U. S., per yuan.
Hong Kong	Dollar		Treasury notes and notes of the 3 banks of issue made legal tender by silver nationalization ordinance of Dec. 5, 1935; exchange fund created to control exchange rate.
Colombia	Peso	1.6479	Obligation to sell gold suspended Sept. 24, 1931.
Costa Rica	Colon	.7879	Conversion of notes into gold suspended Sept. 18, 1914; exchange control established Jan. 16, 1932.
Cuba	Peso	1.0000	By law of May 25, 1934.
Czechoslovakia	Koruna	.0351	By decree of Oct. 9, 1936.
Denmark	Krone	.4537	Conversion of notes into gold suspended Sept. 29, 1931.
Dominican Republic	Dollar	1.6931	U. S. money is principal circulating medium.
Ecuador	Sucre	.3386	Conversion of notes into gold suspended Feb. 9, 1932.
Egypt	Pound (100 piasters)	8.3692	Conversion of notes into gold suspended Sept. 21, 1931.
Estonia	Kroon	.4537	Conversion of notes into gold suspended June 28, 1933.
Finland	Markka	.0426	Conversion of notes into gold suspended Oct. 12, 1931.
France	Franc		Provisions of Monetary law of Oct. 1, 1936, providing for gold content of franc, superseded by decree of June 30, 1937 which stated that the gold content of the franc shall be fixed ultimately by a decree adopted by the Council of Ministers. Until issuance of such decree a stabilization fund shall regulate the relationship between the franc and foreign currencies.
Germany	Reichsmark	.4033	Exchange control established July 13, 1931.
Great Britain	Pound Sterling	8.2397	Obligation to sell gold at legal monetary par suspended Sept. 21, 1931.
Greece	Drachma	.0220	Conversion of notes into gold suspended Apr. 26, 1932.
Guatemala	Quetzal	1.6931	Conversion of notes into gold suspended Mar. 6, 1933.
Haiti	Gourde	.2000	National bank notes redeemable on demand in U. S. dollars.
Honduras	Lempira	.8466	Gold exports prohibited Mar. 27, 1931; lempira circulates as equivalent of half of U. S. dollar.
Hungary	Pengö	.2961	Exchange control established July 17, 1931.
India (British)	Rupee	.6180	Obligation to sell gold at legal monetary par suspended Sept. 21, 1931.
Indo-China	Piaster	.6633	Piaster pegged to French franc at the rate of 1 piaster=10 French francs. Information with regard to the relationship of piaster to franc subsequent to Sept. 25, 1936, not yet available.
Irish Free State	Free State Pound	8.2397	Conversion of notes into gold suspended Sept. 21, 1931.
Italy	Lira	.0526	New gold content of 46.77 milligrams of fine gold per lira established by monetary law of Oct. 5, 1936.
Japan	Yen	.8440	Embargo on gold exports Dec. 13, 1931.
Latvia	Lat		Currency pegged to sterling Sept. 28, 1936, at 2,522 lati=£100.
Liberia	Dollar	1.6931	British money is principal circulating medium.
Lithuania	Litas	.1693	Free export of gold suspended Oct. 1, 1933.
Mexico	Peso		Decree of Aug. 28, 1936, left the monetary unit, the peso, to be later defined by law.
Netherlands and colonies	Guilder (florin)	.6806	Suspension of convertibility of notes into gold and restrictions placed on free gold exports—Sept. 26, 1936.
Newfoundland	Dollar	1.6931	Newfoundland and Canadian notes legal tender.
New Zealand	Pound	8.2397	Conversion of notes into gold suspended and export of gold restricted, Aug. 5, 1914; exchange regulations Dec. 1931.
Nicaragua	Cordoba	1.6933	Embargo on gold exports Nov. 13, 1931.
Norway	Krone	.4537	Conversion of notes into gold suspended Sept. 29, 1931.
Panama	Balboa	1.6933	U. S. money is principal circulating medium.
Paraguay	Peso (Argentine)	1.6335	Paraguayan paper currency is used; exchange control established June 28, 1932.
Persia (Iran)	Rial	.0824	Obligation to pay out gold deferred Mar. 13, 1932; exchange control established Mar. 1, 1936.
Peru	Sol	.4740	Conversion of notes into gold suspended May 18, 1932.
Philippine Islands	Peso	.5000	By act approved Mar. 16, 1935.
Poland	Zloty	.1899	Exchange control established Apr. 27, 1936.
Portugal	Escudo	.0749	Gold exchange standard suspended Dec. 31, 1931.
Rumania	Leu	.0101	Exchange control established May 18, 1932.
Salvador	Colon	.8466	Conversion of notes into gold suspended Oct. 7, 1931.
Siam	Baht (Tical)	.7491	Conversion of notes into gold suspended May 11, 1932.
Spain	Peseta	.3267	Exchange control established May 18, 1931.
Straits Settlements	Dollar	.9613	British pound sterling and Straits dollar and half dollar legal tender.
Sweden	Krona	.4537	Conversion of notes into gold suspended Sept. 29, 1931.
Switzerland	Franc		Order of Federal Council enacted Sept. 27, 1936, instructed the Swiss National Bank to maintain the gold parity of the franc at a value ranging between 190 and 215 milligrams of fine gold.
Turkey	Piaster	.0744	100 piasters equal to the Turkish £; conversion of notes into gold suspended 1916; exchange control established Feb. 26, 1930.
Union of South Africa	Pound	8.2397	Conversion of notes into gold suspended Dec. 28, 1932.
Union of Soviet Republics	Chervonetz	8.7123	On Oct. 28, 1936, the Council of People's Commissars issued a decree fixing the value of the ruble in foreign exchanges at 4¼ French francs.
Uruguay	Peso	1.7511	Conversion of notes into gold suspended Aug. 2, 1914; exchange control established Sept. 7, 1931.
Venezuela	Bolivar	.3267	Premium on foreign currencies established Aug. 29, 1934, by agreement of banks.
Yugoslavia	Dinar	.0298	Exchange control established Oct. 7, 1931.

[This table accompanies F. R. Doc. 38-988, printed on page 835]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[Docket No. A-68 O-68]

NOTICE OF HEARING WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER REGULATING HANDLING IN INTERSTATE COMMERCE AND SUCH HANDLING AS DIRECTLY BURDENS, OBSTRUCTS OR AFFECTS INTERSTATE COMMERCE, OF IRISH (WHITE) POTATOES GROWN IN LOUISIANA AND IN CERTAIN DESIGNATED COUNTIES IN ALABAMA, ARKANSAS, CALIFORNIA, FLORIDA, GEORGIA, MARYLAND, MISSISSIPPI, NORTH CAROLINA, OKLAHOMA, SOUTH CAROLINA, TEXAS AND VIRGINIA

Whereas, under Public Act No. 10, 73rd Congress, as amended and as reenacted by the Agricultural Marketing Agreement Act of 1937, as amended, notice of hearing is required in connection with a proposed marketing agreement or a proposed order, and the General Regulations, Series A, No. 1, as amended,[1] of the Agricultural Adjustment Administration, United States Department of Agriculture, provide for such notice; and

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[1] 1 F. R. 155.

Whereas, the Secretary of Agriculture has reason to believe that the execution of a marketing agreement and the issuance of an order will tend to effectuate the declared policy of said act with respect to the handling of Irish (white) potatoes grown in all counties in the State of Louisiana; in the counties of Santa Barbara, Los Angeles, Riverside, San Bernardino, San Diego and Kern in the State of California; in the counties of Cameron, Hidalgo, Willacy, Atascosa, Bexar, Brazoria, Brown, Colorado, Comanche, Eastland, Erath, Fort Bend, Harris, Hood, Medina, Wharton, Wilson, Bowie, Camp, Cass, Henderson, Hopkins, Lamar, Morris, Red River, Titus and Wood in the State of Texas; in the counties of Hinds, Lauderdale, Newton, Rankin, Scott, Warren and all counties south thereof in the State of Mississippi; in the counties of Baldwin, Escambia and Mobile in the State of Alabama; in the counties of Brevard, Hillsboro, Osceola, Polk, and all counties south thereof, Escambia, Santa Rosa, St. Johns, Seminole, Union, Alachua, Bradford, Clay, Flagler, Marion, Putnam and Volusia in the State of Florida; in the counties of Arkansas, Ashley, Bradley, Calhoun, Clark, Cleburne, Cleveland, Columbia, Conway, Crawford, Dallas, Desha, Drew, Franklin, Garland, Grant, Hot Springs, Howard, Jackson, Jefferson, Johnson, LaFayette, Lincoln, Little River, Logan, Miller, Montgomery, Nevada, Ouachita, Pike, Polk, Pope, Pulaski, Salina, Scott, Sebastian, Sevier, Washington, White and Yell in the State of Arkansas; in the counties of Adair, Bryan, Carter, Cherokee, Choctaw, Coal, Grady, Hughes, Le Flore, McIntosh, Nobel, Oklahoma, Haskell, Latimer, McCurtain, Muskogee, Okfuskee, Okmulgee, Osage, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Washington, Seminole, Sequoyah, Tulsa and Wagoner, in the State of Oklahoma; in the counties of Beaufort, Bladen, Carteret, Columbus, Craven, Cumberland, Duplin, Edgecombe, Greene, Halifax, Harnett, Washington, Camden, Chowan, Currituck, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pender, Pitt, Robeson, Sampson, Tyrrell, Wayne, Wilson, Perquimans and Pasquotank in the State of North Carolina; in the counties of Elizabeth City, Gloucester, Isle of Wight, James City, Mathews, Middlesex, Nansemond, Norfolk, Princess Anne, Warwick, York, Accomac and Northampton in the State of Virginia; in the counties of Allendale, Beaufort, Berkeley, Charleston, Clarendon, Colleton, Dorchester, Georgetown, Hampton, Horry, Jasper, Marion, Orangeburg, Sumter, and Williamsburg in the State of South Carolina; in the counties of Bryan, Chatham, Effingham, Liberty, Long and Screven in the State of Georgia; and in the counties of Dorchester, Somerset, Wicomico and Worcester in the State of Maryland;

Now, therefore, pursuant to the said act and said general regulations notice is hereby given of a hearing to be held on a proposed marketing agreement and a proposed order regulating the handling of such potatoes in the San Benito City Hall, San Benito, Texas, on April 18, 1938, at 9:30 a. m.; in the McCarthey Hotel, Texarkana, Texas, on April 20, 1938, at 9:30 a. m.; in the Library, Pulaski County Court House, Markham and Broadway Streets, Little Rock, Arkansas, on April 21, 1938, at 9:30 a. m.; in the Court House, Muskogee, Oklahoma, on April 22, 1938, at 9:30 a. m.; in the Court House, Wharton, Texas, on April 18, 1938, at 9:30 a. m.; in Room 300, Association of Commerce Building, 315 Camp Street, New Orleans, La., on April 20, 1938, at 9:30 a. m.; in the Auditorium, Court House (second floor), Gulfport, Mississippi, on April 21, 1938, at 9:30 a. m.; in the American Legion Hall, Foley, Alabama, on April 23, 1938, at 9:30 a. m.; in the Criminal Court Room, Court House, West Palm Beach, Florida, on April 18, 1938, at 9:30 a. m.; in the Court House, Palatka, Florida, on April 19, 1938, at 9:30 a. m.; in the Court Room, Court House, Springfield, Georgia, on April 20, 1938, at 9:30 a. m.; in the Community Center Auditorium, Community Center Headquarters, Charleston, South Carolina, on April 21, 1938, at 9:30 a. m.; in the Auditorium, Central High School, Painter, Virginia, on April 19, 1938, at 9:30 a. m.; in the Social Hall, Navy Y. M. C. A., 130 Brooke Avenue, Norfolk, Virginia, on April 21, 1938, at 9:30 a. m.; in the High School Auditorium, Washington, North Carolina, on April 22, 1938, at 9:30 a. m.; in the Richland Grammar School, Auditorium, Shafter, California, on April 19, 1938, at 9:30 a. m.; and in the Assembly Hall, State Office Building, Los Angeles, California, on April 20, 1938, at 9:30 a. m.

This public hearing is for the purpose of receiving evidence as to the general economic conditions which may necessitate regulation in order to effectuate the declared policy of the act and as to the specific provisions which a marketing agreement and order should contain.

The proposed marketing agreement and the proposed order each embodies, in similar terms, a plan for the regulation of such handling of Irish (white) potatoes grown in the State of Louisiana and in the above mentioned counties in the States of Alabama, Arkansas, California, Florida, Georgia, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Texas and Virginia as is in the current of interstate commerce, or which directly burdens, obstructs or affects interstate commerce in such potatoes. Among other things, the proposed marketing agreement and proposed order provide for: (a) the establishment of area committees, district committees and an Early Potato Committee, (b) prohibition of shipment of "cull" potatoes, (c) further grade and size regulations of shipments, (d) expenses of administration, and other matters relating to the handling of such potatoes in the aforesaid States and counties.

It is hereby declared that an emergency exists in the handling of potatoes in the aforesaid area which requires a shorter period of notice than fifteen (15) days; and it is hereby determined that the period of notice given is reasonable under the circumstances.

Copies of the proposed marketing agreement and proposed order may be inspected in or procured from the Hearing Clerk, Room 0318, South Building, United States Department of Agriculture, Washington, D. C.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

Dated April 5, 1938.

[F. R. Doc. 38-989; Filed, April 6, 1938; 12:42 p. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Amendment No. 2 to Order No. 28]

AMENDMENT OF ORDER ASSIGNING COMMISSIONERS, ETC., TO ACT ON VARIOUS CLASSES OF APPLICATIONS

The Commission at a meeting held March 30, 1938 amended Order No. 28[1] by deleting Paragraph 1 thereof and substituting therefor the following:

(1) That the Secretary of the Federal Communications Commission is hereby authorized to determine, order, certify, report or otherwise act upon:

(*a*) all applications for operator licenses, and

(*b*) all applications for amateur, ship and aircraft stations.

[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 38-982; Filed, April 6, 1938; 9:45 a. m.]

FEDERAL HOME LOAN BANK BOARD.

Home Owners' Loan Corporation.

AMENDING THE TREASURY CHAPTER OF THE MANUAL

REVOKING PROVISIONS FOR ESCROW ACCOUNT

Be it resolved, That pursuant to the authority vested in the Board by Home Owners' Loan Act of 1933 (48 Stat. 128, 129) as amended by Sections 1 and 13 of the Act of April 27, 1934 (48 Stat. 643-647) and particularly by sub-Sections a and k of Section 4 of said Act as amended, Section 720 of Chapter VII[1] of the Consolidated Manual is hereby revoked.

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[1] 2 F. R. 3241 (DI).

Adopted by the Federal Home Loan Bank Board on April 5, 1938.

[SEAL] R. L. NAGLE, *Secretary*.

[F. R. Doc. 38-984; Filed, April 6, 1938; 10:20 a. m.]

RAILROAD RETIREMENT BOARD.

REGULATIONS RELATING TO THE EXISTENCE OR NON-EXISTENCE OF AN EMPLOYMENT RELATION AS DEFINED IN THE RAILROAD RETIREMENT ACT OF 1937

Pursuant to the authority conferred by section 10 of the Railroad Retirement Act of 1937 the Railroad Retirement Board hereby prescribes the following rules and regulations:

I

GENERAL RULES

1. The existence or non-existence of an employment relation as defined in Section 1 (d) of the Railroad Retirement Act of 1937 is a conclusion which must be reached by the Board or its authorized representatives upon the basis of the evidence before it; the burden of formulating the conclusion may not be delegated to the employer or to the individual or to any representative of either; the employer or the individual or their representatives are the principal sources of evidence with respect to the established rules and practices in effect on the employer and with respect to the facts constituting the conditions under which the individual was not in active service, but the Board will not make a determination on the basis of a conclusion of the employer or of the individual or of a representative of either to the effect that the individual had or had not an employment relation.

2. An employment relation exists if there was, at the time in question, in effect on the employer an established rule or practice in accordance with which the individual was either (a) on furlough (subject to call for service and ready and willing to serve) or (b) on leave of absence, or (c) absent on account of sickness or disability.

3. A furlough, leave of absence, or absence on account of sickness or disability, within the scope of these regulations or the Railroad Retirement Act of 1937, exists if the terms of the established rule or practice in accordance with which the individual is out of active service are such that they would operate to restore him to active service upon the occurrence of definite and ascertainable events or conditions. Within the limitations of the preceding sentence: A furlough is an involuntary absence from active service which is brought about by action of the employer. A leave of absence is action of the employer permitting or requiring the employee to remain away from active service and relieving the employee from the obligations or conditions attached to active service, or to a furlough relationship or to absence on account of sickness or disability; absence on account of sickness or disability is an interruption of active service, or of a furlough, by reason of sickness or disability. An individual on furlough can have an employment relation only if at the time in question he was subject to call for service and ready and willing to serve.

4. An established rule is an authoritative and binding declaration definitely and specifically formulated and of general application to employees within the same class. A rule may be expressed either in the form of specific authoritative instructions in force on the employer or in a contract or working agreement covering the individual and made between the employer and an employee organization, and may derive its authoritative effect either from the authority of the officer issuing the declaration or from the binding nature of the contract between the employer and the employee organization.

5. An established practice is a custom not expressed in the form of a rule but followed with such frequency and uniformity as to give reasonable assurance that it would be followed in the individual's case, and to permit ascertainment of the practice with such precision as to render it capable of statement in the form of a rule.

6. No employment relation can exist unless it represents a continuous relationship following immediately upon actual compensated service; it cannot be brought into existence through an application for employment, or inclusion on a waiting list, or a promise of employment, or similar circumstances preceding actual service or following an interruption of the relationship: Provided, however, that a rule may be amended so as to create anew an employment relationship which has lapsed, but such relationship can exist only from the time of the adoption of such amendment.

7. The termination of an employment relation need not involve a specific action but may be inferred from circumstances. It is terminated in any case in which there has been discharge, resignation, or retirement, with or without pension. Discharge, resignation or retirement must be determined according to the substance of the transaction, even though the transaction may have been denominated furlough, leave of absence or absence on account of sickness or disability. A transaction so denominated, but which represents in substance and effect a discharge, resignation or retirement, terminates the employment relation.

II

BEARING OF SPECIFIC FACTORS UPON EXISTENCE OF EMPLOYMENT RELATION

In the application of the general rules set forth in Part I of these regulations, certain specific and frequently recurring factors shall be dealt with in accordance with the respective paragraphs of this Part II. Such paragraphs do not constitute an exhaustive catalogue of all factors which may arise in the application of the general rules to concrete cases.

1. *Probability of return to service.*—Any established rule or practice, in order to be relevant to the existence of an employment relation, and any furlough, leave of absence, or absence on account of sickness or disability which is claimed to express an employment relation, must contemplate a resumption of active service. Physical or mental incapacity to return to service, even though judged to be "permanent", is not in and of itself significant, except that it is significant in connection with definitive action of the employer or of the individual, including statements or actions on the part of the individual indicating his retirement or statements or actions of the employer treating the individual as a retired employee, such as, application for and the award of a pension or gratuity of indefinite duration.

2. *Limitations of Time.*—Where the terms of a furlough, or the rules or practices under which it was issued, place a limitation on the time within which the furlough will operate to return an individual to active service, the employment relation ceases upon the expiration of such period, unless he has resumed active service within the period. Where the terms of a leave of absence or the conditions under which an individual is absent on account of sickness or disability, or the rules or practices under which a leave of absence is granted or an absence on account of sickness or disability is permitted, place a limitation on the time during which the individual may be absent, the employment relation ceases upon the expiration of such period, unless he has reported for active service upon or before the expiration of such period. However, the period may be extended by action of the employer if such action is permissible under the established rules or practices in effect on the employer.

3. *Failure to preserve or exercise rights.*—Where the terms of a furlough, leave of absence or absence on account of sickness or disability, or the rules or practices under which it is granted, require periodic or continuous action of the individual (such as periodic renewal of address, or continuous availability for service, or the exercise of rights upon proper occasion) in order to preserve his status, or require the continuance of a condition (such as the continuance of incapacity as the basis of absence on account of sickness or disability) and the individual fails to take such action, or the

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[1] 1 F. R. 1060.

condition ceases to exist, the employment relation terminates.

4. *Seniority Roster.*—The appearance of the individual's name on a seniority roster is not, in and of itself, indicative of an employment relation. There must appear the further fact that the appearance of the individual's name on the seniority roster is based on established rules or practices in effect on the employer which would operate to restore him to active service upon the occurrence of definite and ascertainable events or conditions.

5. *Promise of Further Employment after Termination of Rights.*—When such rights to return to service as an individual may hold, in accordance with the established rules and practices in effect on the employer, are terminated, but in connection with such termination or coincidentally therewith, a promise not in accordance with the established rules or practices in effect on the employer is made, indicating some future employment, such promise does not operate to maintain an employment relation.

6. *Reinstatement.*—A bona fide reinstatement with restoration of seniority privileges, with or without pay for time lost, made for the purpose of and in contemplation of return to actual service (irrespective of whether actual service is resumed) operates to maintain the employment relation throughout the breach in service, provided that the reinstatement is not a violation of the rights of other employees. Participation in the reinstatement by representatives of the other employees, or acquiescence on their part in an actual return to service, shall be conclusive evidence that the reinstatement was not a violation of the rights of such other employees.

7. *Reaching retirement age while in employment relation.*—If there is in effect upon the employer an established rule or practice requiring automatic retirement upon attainment of a particular age, or at the end of the month in which such age is attained, such rule or practice will operate to terminate the employment relation of an individual who is on furlough, leave of absence, or absent on account of sickness or disability when the time for automatic retirement is reached.

8. *Abolition of job, discontinuance of service and abandonment of line.*—Abolition of a job, or the discontinuance of a service, in which the individual was engaged is not in and of itself relevant to the determination of the existence or nonexistence of an employment relation. When an individual is out of active service under such circumstances, determination must be made under the other provisions of those regulations as to whether the individual was on furlough, leave of absence, or absent on account of sickness or disability, in accordance with established rules or practices in effect on the employer. However, abandonment of line or facility involving abandonment of all jobs to which the individual's preference or seniority attaches under the established rules or practices in effect on the employer terminates the employment relation, unless, by agreement between the employer and the individuals affected, the latter acquire seniority on some other line or facility of the employer; or in cases of merger or consolidation of two or more employers, on the consolidated or merged employer; such agreement need not be entered into simultaneously with the abandonment of the line or facility, provided that it is so immediately and directly connected therewith as to constitute part of the disposition of the same matter.

9. *Pass privileges, or retention of employer property.*—The fact that an individual continues to receive free transportation, or is permitted to retain employer property, such as rule books and switch keys, is not indicative of the existence of an employment relation. However, definite action of the employer terminating free transportation privileges or requiring the surrender of employer property may be indicative of the termination of the employment relation.

By direction of the Board.

[SEAL] R. B. BRONSON, *Secretary*.

APRIL 4, 1938.

[F. R. Doc. 38-983; Filed, April 6, 1938; 10:10 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 21st day of March, A. D., 1938.

[File No. 37-14]

IN THE MATTER OF CITIZENS UTILITIES COMPANY

AMENDMENT TO ORDER GRANTING TEMPORARY EXEMPTION FROM THE PROVISIONS OF SECTION 13 (A) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Citizens Utilities Company, a registered holding company, having filed an application, and amendments thereto, for an exemption from the provisions of Section 13 (a) of the Public Utility Holding Company Act of 1935; a hearing on said application, as amended, having been duly held after appropriate notice;[1] the Commission having issued an order on October 6, 1936, exempting said Citizens Utilities Company from the provisions of Section 13 (a) of said Act for a period of six months from the date of such order; one of the findings upon which said order was based being that applicant's servicing of its subsidiary companies while certain of them were in the process of being merged or consolidated with it, constituted special and unusual circumstances justifying a temporary exemption; and said order having been made upon condition that the services performed by said Citizens Utilities Company should comply with the provisions of such rules, regulations, or orders of the Commission as may be applicable, including Rule 13-31, and upon the further condition that the applicant, in accordance with such rules and regulations, should amend its method of allocating costs so as to charge itself for the expenses of its operations as a holding company and so that it should make direct charges so far as costs can be identified and related to particular transactions without excessive effort or expense;

Said exemption having been heretofore extended until sixty days after the determination of a certain application made by said Citizens Utilities Company to the Federal Power Commission, for approval of the transfer of certain facilities by Newport Electric Corporation, one of applicant's subsidiaries, to applicant; the Commission being advised that the Federal Power Commission has denied said application and has on January 21, 1938 denied an application for a re-hearing thereon; the said Citizens Utilities Company having filed a petition for review of said determination of the Federal Power Commission, pursuant to Section 313 (b) of the Federal Power Act, and the Commission thereupon having reconsidered the record in this case;

It is ordered, That said order of the Commission, dated October 6, 1936, as heretofore amended,[2] be and it hereby is further amended to provide that the exemption therein granted shall continue until sixty days after the expiration, or final adjudication, of any rights of said Citizens Utilities Company, pursuant to said Section 313 (b) of the Federal Power Act, to seek to modify or set aside, in whole or in part, said order of the Federal Power Commission, upon condition that said Citizens Utilities Company shall continue to comply with the conditions contained in the Commission's order of October 6, 1936.

It is further ordered, That the exemption herein granted shall be subject to revocation, after notice and opportunity for hearing, in the event that said Citizens Utilities Company shall not diligently proceed to obtain a final adjudication of its rights with respect to said application to the Federal Power Commission, or shall fail to comply with the terms of the original order.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary*.

[F. R. Doc. 38-987; Filed, April 6, 1938; 11:28 a. m.]

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[1] F. R. 1050.

[2] 1 F. R. 1553; 2 F. R. 821, 1598, 1670 (DI).